



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU



## ☞ Appendix A ... segment IV

### LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2011 LRB-0339 (For: Rep. Mursau)

has been transferred to the drafting file for

**2013 LRB-0056** (For: Rep. Mursau)



## **RESEARCH APPENDIX -** **PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 10/03/2012 (Per: RNK)

☞ The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

if redrafting  
this  
look at  
following

1 appointed for 3-year terms who are knowledgeable in the various recreational uses  
2 of off-highway vehicles.

3 **SECTION 2.** 20.370 (1) (iw) of the statutes is created to read:

4 20.370 (1) (iw) *Off-highway vehicle fees.* All moneys received under s. 23.34  
5 (2) (m) for state off-highway vehicle trails, for state law enforcement operations  
6 related to off-highway vehicles, and for grants under s. 23.34 (10).

7 **SECTION 3.** 23.34 of the statutes is created to read:

8 **23.34 Off-highway vehicles. (1) DEFINITIONS.** In this section:

9 (ag) "Alcohol beverage" has the meaning specified under s. 125.02 (1).

10 (am) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

11 (ar) "All-terrain vehicle" has the meaning given in s. 340.01 (2g).

12 (aw) "Approved public treatment facility" has the meaning specified under s.  
13 51.45 (2) (c).

14 (b) "Class A off-highway vehicle" means an off-highway vehicle that is eligible  
15 for registration under ch. 341.

16 (c) "Class B off-highway vehicle" means an off-highway vehicle that is exempt  
17 from registration under ch. 341 as provided under s. 341.10 (6) or (6m).

18 (cf) "Controlled substance" has the meaning specified under s. 961.01 (4).

19 (ch) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

20 (cm) "Intoxicant" means any alcohol beverage, controlled substance, controlled  
21 substance analog, or other drug or any combination thereof.

22 (cp) "Intoxicated operation of an off-highway vehicle law" means sub. (4c) or  
23 a local ordinance in conformity therewith or, if the operation of an off-highway  
24 vehicle is involved, s. 940.09 or 940.25.

(b) No operator of an off-highway vehicle required to be registered under this section may refuse to stop after being requested or signaled to do so by a law enforcement officer or a commission warden, as defined in s. 939.22 (5).

**(14) PENALTIES.** (a) *General penalties.* Any person who violates this section shall forfeit not less than \$250 for a first violation, not less than \$500 for a 2nd violation, and not less than \$1,000 for a 3rd or subsequent violation.

\*\*\*\*NOTE: These penalties should also include a maximum amount for each violation. Also, do you want to specify that for the purpose of “counting” a violation, the later violation must have been committed within a specified period after the previous violation was committed?

(b) *Safety certificate requirement.* In addition to the penalties under par. (a) the court shall require any person who violates this section to successfully complete the program of instruction on off-highway vehicle laws established by the department under sub. (9) (d) regardless of whether the person has previously successfully completed the program.

(c) *Restoration or replacement of signs and standards.* In addition to any other penalty, the court may order the defendant to restore or replace any uniform off-highway vehicle trail sign or standard that the defendant removed, damaged, defaced, moved, or obstructed.

**SECTION 4.** 23.45 (1) (d) of the statutes is amended to read:

23.45 (1) (d) "Registration" means any registration documentation, as defined in s. 23.33 (1) (jn), 23.34 (1) (p), or s. 350.01 (10t), or certification or registration documentation, as defined in s. 30.50 (3b), issued by the department or its agents.

**SECTION 5.** 23.53 (1) of the statutes is amended to read:

23.53 (1) The citation created under this section shall, in all actions to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated

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1       thereunder, and any rule of the Kickapoo reserve management board under s. 41.41  
2       (7) (k) be used by any law enforcement officer with authority to enforce those laws,  
3       except that the uniform traffic citation created under s. 345.11 may be used by a  
4       traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law  
5       enforcement agency of a municipality or county or a traffic officer employed under  
6       s. 110.07 in enforcing s. 287.81. In accordance with s. 345.11 (1m), the citation shall  
7       not be used for violations of ch. 350 relating to highway use. The citation may be used  
8       for violations of local ordinances enacted by any local authority in accordance with  
9       s. 23.33 (11) (am), 23.34 (12), or 30.77.

10       **SECTION 6.** 23.56 (1) of the statutes is amended to read:

11       23.56 (1) A person may be arrested for a violation of those statutes enumerated  
12       in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the  
13       Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances  
14       enacted by any local authority in accordance with s. 23.33 (11) (am), 23.34 (12), or  
15       30.77, after a warrant that substantially complies with s. 968.04 has been issued.  
16       Except as provided in sub. (2), the person arrested shall be brought without  
17       unreasonable delay before a court having jurisdiction to try the action.

18       **SECTION 7.** 23.57 (1) (intro.) of the statutes is amended to read:

19       23.57 (1) (intro.) A person may be arrested without a warrant when the  
20       arresting officer has probable cause to believe that the person is committing or has  
21       committed a violation of those statutes enumerated in s. 23.50 (1), any  
22       administrative rules promulgated thereunder, any rule of the Kickapoo reserve  
23       management board under s. 41.41 (7) (k), or any local ordinances enacted by any local  
24       authority in accordance with s. 23.33 (11) (am), 23.34 (12), or 30.77; and:

25       **SECTION 8.** 23.58 of the statutes is amended to read:

1           **23.58 Temporary questioning without arrest.** After having identified  
2 himself or herself as an enforcing officer, an enforcing officer may stop a person in  
3 a public place for a reasonable period of time when the officer reasonably suspects  
4 that such person is committing, is about to commit or has committed a violation of  
5 those statutes enumerated in s. 23.50 (1), any administrative rules promulgated  
6 thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7)  
7 (k), or any local ordinances enacted by any local authority in accordance with s. 23.33  
8 (11) (am), 23.34 (12), or 30.77. Such a stop may be made only where the enforcing  
9 officer has proper authority to make an arrest for such a violation. The officer may  
10 demand the name and address of the person and an explanation of the person's  
11 conduct. Such detention and temporary questioning shall be conducted in the  
12 vicinity where the person was stopped.

13           **SECTION 9.** 23.62 (1) (intro.) of the statutes is amended to read:

14           23.62 (1) (intro.) Whenever an enforcing officer has probable cause to believe  
15 that a person subject to his or her authority is committing or has committed a  
16 violation of those statutes enumerated in s. 23.50 (1), any administrative rules  
17 promulgated thereunder, any rule of the Kickapoo reserve management board under  
18 s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance  
19 with s. 23.33 (11) (am), 23.34 (12), or 30.77, the officer may proceed in the following  
20 manner:

21           **SECTION 10.** 30.26 (4) (a) (intro.) of the statutes is amended to read:

22           30.26 (4) (a) (intro.) The department may not prohibit the crossing of a bridge  
23 over a wild river by an all-terrain vehicle traveling on an all-terrain vehicle trail,  
24 as defined under s. 23.33 (1) (d), by an off-highway vehicle traveling on an  
25 off-highway vehicle trail, as defined under s. 23.34 (1) (L), or by a snowmobile

1 traveling on a snowmobile trail, as defined under s. 350.01 (17) that is constructed  
2 in any of the following locations:

3 **SECTION 11.** 30.26 (4) (b) of the statutes is amended to read:

4 30.26 (4) (b) The state shall permit all-terrain vehicles and snowmobiles to  
5 travel in a corridor across any state land that separates an all-terrain vehicle trail  
6 or a snowmobile trail and the bridges constructed at the locations listed under par.  
7 (a).

\*\*\*\*NOTE: Do you want to amend this provision to include off-highway vehicles?

8 **SECTION 12.** 78.01 (2) (e) of the statutes is amended to read:

9 78.01 (2) (e) Gasoline sold for nonhighway use in mobile machinery and  
10 equipment; other than use in a snowmobile, an all-terrain vehicle that is not  
11 registered for private use under s. 23.33 (2) (d), a Class B off-highway vehicle  
12 registered under s. 23.34, or a recreational motorboat; and delivered directly into the  
13 consumer's storage tank in an amount of not less than 100 gallons.

14 **SECTION 13.** 78.01 (2m) (f) of the statutes is amended to read:

15 78.01 (2m) (f) It is dyed diesel fuel and is sold for off-highway use other than  
16 use in a snowmobile, an all-terrain vehicle that is not registered for private use  
17 under s. 23.33 (2) (d) or (2g), a Class B off-highway vehicle registered under s. 23.34,  
18 or in a recreational motorboat or if no claim for a refund for the tax on the diesel fuel  
19 may be made under s. 78.75 (1m) (a) 3.

20 **SECTION 14.** 78.40 (1) of the statutes is amended to read:

21 78.40 (1) IMPOSITION OF TAX AND BY WHOM PAID. An excise tax at the rate  
22 determined under ss. 78.405 and 78.407 is imposed on the use of alternate fuels. The  
23 tax, with respect to all alternate fuel delivered by an alternate fuel dealer into supply  
24 tanks of motor vehicles in this state, attaches at the time of delivery and shall be

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1 collected by the dealer from the alternate fuels user and shall be paid to the  
2 department. The tax, with respect to alternate fuels acquired by any alternate fuels  
3 user other than by delivery by an alternate fuel dealer into a fuel supply tank of a  
4 motor vehicle, or of a snowmobile, an all-terrain vehicle that is not registered for  
5 private use under s. 23.33 (2) (d) or (2g), a Class B off-highway vehicle registered  
6 under s. 23.34, or a recreational motorboat, attaches at the time of the use of the fuel  
7 and shall be paid to the department by the user. The department may permit any  
8 supplier of alternate fuels to report and pay to the department the tax on alternate  
9 fuels delivered into the storage facility of an alternate fuels user or retailer which will  
10 be consumed for alternate fuels tax purposes or sold at retail.

11 **SECTION 15.** 110.07 (1) (a) 1. of the statutes is amended to read:

12 110.07 (1) (a) 1. Enforce and assist in the administration of this chapter and  
13 chs. 194, 218, 341 to 349 and 351, and ss. 23.33, 23.34, 125.07 (4) (b), 125.085 (3) (b),  
14 167.31 (2) (b) to (d) and 287.81 and ch. 350 where applicable to highways, or orders  
15 or rules issued pursuant thereto.

16 **SECTION 16.** 110.07 (3) of the statutes is amended to read:

17 110.07 (3) The secretary may employ inspectors who may not wear the uniform  
18 of the state patrol, whose duties shall be to enforce and assist in administering s.  
19 346.63, this chapter and chs. 194, 218, 340 to 345 and 347 to 351, ~~s. ss. 23.33,~~ and  
20 23.34, the inspection requirements of s. 121.555 (2) (b) and the requirements under  
21 s. 346.45 (4) for vehicles being used to transport hazardous materials. Such  
22 inspectors, in the performance of these duties, shall have the powers and authority  
23 of state traffic officers. For the purpose of death, disability and retirement coverage,  
24 such inspectors shall be subject to ch. 40 as is the state traffic patrol. Subject to sub.

1 (5), the secretary may clothe and equip inspectors as the interest of public safety and  
2 their duties require.

3 **SECTION 17.** 322.111 of the statutes is amended to read:

4 **322.111 Article 111 — Drunken or reckless operation of an all-terrain**  
5 **vehicle, off-highway vehicle, vehicle, snowmobile, aircraft, or vessel.** Any  
6 person who violates s. 23.33 (3) (a) or (4c), 23.34 (4) (a) or (4c), 30.68, 30.681, 114.09,  
7 346.62, 346.63 (1) or (2), 350.10 (1) (b), 350.101, 940.25, or 940.09 where the offense  
8 involved the operation or physical control of an aircraft, all-terrain vehicle,  
9 off-highway vehicle, snowmobile, vehicle or vessel on or off a highway shall be  
10 punished as the court-martial may direct.

11 **SECTION 18.** 340.01 (intro.) of the statutes is amended to read:

12 **340.01 Words and phrases defined.** (intro.) In s. ~~ss. 23.33 and 23.34~~ and <sup>no</sup>  
13 chs. 340 to 349 and 351, the following words and phrases have the designated  
14 meanings unless a different meaning is expressly provided or the context clearly  
15 indicates a different meaning:

16 **SECTION 19.** 341.059 of the statutes is created to read:

17 **341.059 Off-highway vehicles.** Class B off-highway vehicles, as defined in  
18 s. 23.34 (1) (c), are not required to be registered under this chapter but shall be  
19 registered under s. 23.34 (2).

20 **SECTION 20.** 345.11 (1r) of the statutes is amended to read:

21 **345.11 (1r)** The uniform traffic citation or the citation form under s. 23.54 shall  
22 be used for violations of ~~s. ss. 23.33 and 23.34~~ relating to highway use or ordinances  
23 enacted in accordance with that section if the violation is committed on a highway,  
24 but no points may be assessed against the driving record of the operator of an  
25 all-terrain vehicle. When the uniform traffic citation is used, the report of conviction



1 shall be forwarded to the department. When the citation form under s. 23.54 is used,  
2 the procedure in ss. 23.50 to 23.85 applies.

3 **SECTION 21.** 800.02 (2) (b) of the statutes is amended to read:

4 800.02 (2) (b) Except for parking violations, in traffic regulation actions in  
5 municipal court, the uniform traffic citation specified in s. 345.11 shall be used in lieu  
6 of the citation form specified in par. (ag). In actions for violations of local ordinances  
7 enacted in accordance with s. 23.33 (11) (am), 23.34 (12), or 30.77, the citation form  
8 specified in s. 23.54 shall be used in lieu of the citation form specified in par. (ag).

9 **SECTION 22.** 885.235 (1m) of the statutes is amended to read:

10 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m)  
11 or (7), or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the  
12 time in question, as shown by chemical analysis of a sample of the person's blood or  
13 urine or evidence of the amount of alcohol in the person's breath, is admissible on the  
14 issue of whether he or she had an alcohol concentration in the range specified in s.  
15 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol  
16 concentration above 0.0 under s. 23.34 (4c) (a) 2. or 346.63 (7) if the sample was taken  
17 within 3 hours after the event to be proved. The fact that the analysis shows that  
18 the person had an alcohol concentration of more than 0.0 but not more than 0.08 is  
19 prima facie evidence that the person had an alcohol concentration in the range  
20 specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an  
21 alcohol concentration above 0.0 under s. 23.34 (4c) (a) 2. or 346.63 (7).

22 **SECTION 23.** 895.049 of the statutes is amended to read:

23 **895.049 Recovery by a person who fails to use protective headgear**  
24 **while operating certain motor vehicles.** Notwithstanding s. 895.045, failure by  
25 a person who operates or is a passenger on a motorcycle, as defined in s. 340.01 (32),

1 an all-terrain vehicle, as defined in s. 340.01 (2g), or a snowmobile, as defined in s.  
2 340.01 (58a), on or off a highway, to use protective headgear shall not reduce recovery  
3 for injuries or damages by the person or the person's legal representative in any civil  
4 action. This section does not apply to any person required to wear protective  
5 headgear under s. 23.33 (3g), 23.34 (9) (b) 1., or 347.485 (1).

6 **SECTION 24.** 901.053 of the statutes is amended to read:

7 **901.053 Admissibility of evidence relating to use of protective**  
8 **headgear while operating certain motor vehicles.** Evidence of use or nonuse  
9 of protective headgear by a person, other than a person required to wear protective  
10 headgear under s. 23.33 (3g), 23.34 (9) (b) 1., or 347.485 (1), who operates or is a  
11 passenger on a motorcycle, as defined in s. 340.01 (32), an all-terrain vehicle, as  
12 defined in s. 340.01 (2g), an off-highway vehicle, as defined in s. 23.34 (1) (f). or a  
13 snowmobile, as defined in s. 340.01 (58a), on or off a highway, is not admissible in any  
14 civil action for personal injury or property damage. This section does not apply to  
15 the introduction of such evidence in a civil action against the manufacturer or  
16 producer of the protective headgear arising out of any alleged deficiency or defect in  
17 the design or manufacture of the protective headgear or, with respect to such use of  
18 protective headgear, in a civil action on the sole issue of whether the protective  
19 headgear contributed to the personal injury or property damage incurred by another  
20 person.

21 **SECTION 25.** 938.17 (1) (intro.) of the statutes is amended to read:

22 **938.17 (1) TRAFFIC, BOATING, SNOWMOBILE ~~AND~~, ALL-TERRAIN VEHICLE, AND**  
23 **OFF-HIGHWAY VEHICLE VIOLATIONS.** (intro.) Except for violations of ss. 342.06 (2) and  
24 344.48 (1), and violations of ss. 30.67 (1) and 346.67 (1) when death or injury occurs,  
25 courts of criminal and civil jurisdiction have exclusive jurisdiction in proceedings

1 against juveniles 16 years of age or older for violations of ~~s. ss.~~ 23.33 and 23.34, of  
2 ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic regulations, as defined in s. 345.20,  
3 and nonmoving traffic violations, as defined in s. 345.28 (1). A juvenile charged with  
4 a traffic, boating, snowmobile, ~~or all-terrain vehicle, or off-highway vehicle~~ offense  
5 in a court of criminal or civil jurisdiction shall be treated as an adult before the trial  
6 of the proceeding except that the juvenile may be held in secure custody only in a  
7 juvenile detention facility. A juvenile convicted of a traffic, boating, snowmobile, ~~or~~  
8 all-terrain vehicle, or off-highway vehicle offense in a court of criminal or civil  
9 jurisdiction shall be treated as an adult for sentencing purposes except as follows:

10 **SECTION 26.** 938.343 (9) of the statutes is amended to read:

11 938.343 (9) ALL-TERRAIN VEHICLE OR OFF-HIGHWAY VEHICLE SAFETY COURSE. If the  
12 violation is one under s. 23.33 or under an ordinance enacted in accordance with s.  
13 23.33 concerning the use of all-terrain vehicles, order the juvenile to attend an  
14 all-terrain vehicle safety course. If the violation is one under s. 23.34 or under an  
15 ordinance enacted in accordance with s. 23.34 concerning the use of off-highway  
16 vehicles, order the juvenile to attend an off-highway vehicle safety course.

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17 **SECTION 27.** 940.09 (3) of the statutes is amended to read:

18 940.09 (3) An officer who makes an arrest for a violation of this section shall  
19 make a report as required under s. 23.33 (4t), 23.34 (4t), 30.686, 346.635 or 350.106.

20 **SECTION 28. Nonstatutory provisions.**

21 (1) Notwithstanding the length of terms specified in section 15.347 (8) of the  
22 statutes, as created by this act, the governor shall appoint 3 of the initial members  
23 of the off-highway vehicle council for terms expiring on June 30, 2014, 3 of the initial  
24 members of the off-highway vehicle council for terms expiring on June 30, 2015, and

1 3 of the initial members of the off-highway vehicle council for terms expiring on June  
2 30, 2016.

3 (END)